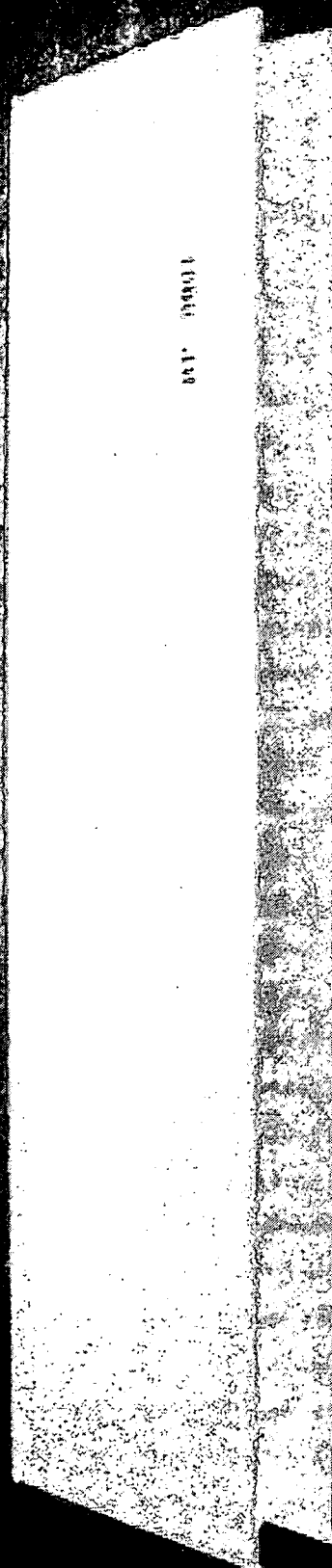
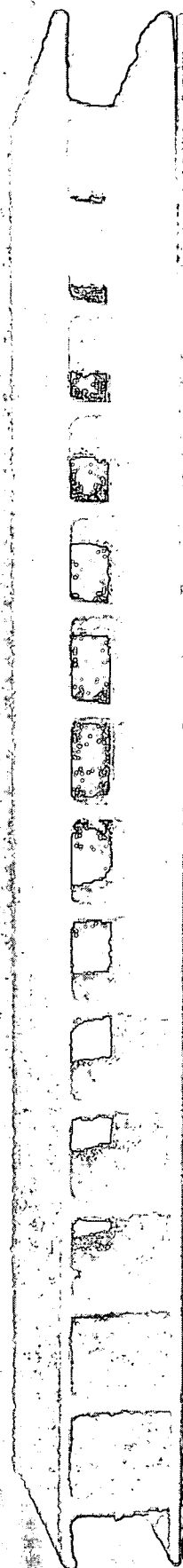
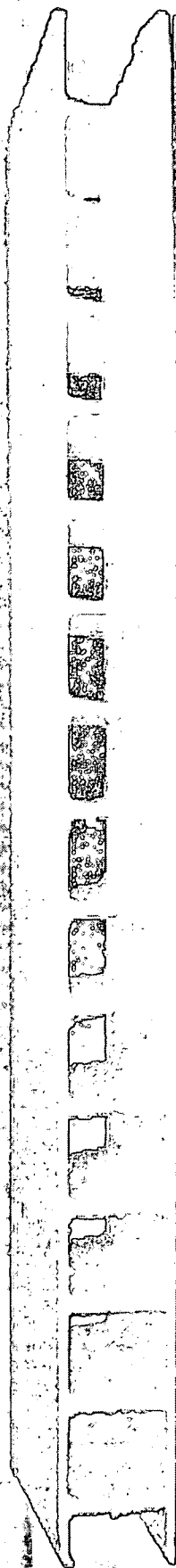


## Exhibit 15, Part 2







Matthew G. Bagley (6820)  
**KESLER & RUST**  
36 South State Street, Suite 2000  
Beneficial Life Tower  
Salt Lake City, Utah 84111  
Telephone: (801) 532-8000  
Facsimile: (801) 531-7965  
**ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.**

Randall T. Skaar (*Pro Hac Vice*)  
Matthew T. Macari (*Pro Hac Vice*)  
**PATTERSON, THUENTE, SKAAR**  
**& CHRISTENSEN, P.A.**  
4800 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2100  
Telephone: (612) 349-5740  
Facsimile: (612) 349-9266  
**ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

Diversi-Plast Products, Inc.,	)	
a Minnesota corporation,	)	
	)	
Plaintiff,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
vs.	)	
	)	
Battens Plus, Inc.,	)	
a California corporation,	)	Civil Action No: 2:04-CV-01005 PGC
	)	Judge: Paul G. Cassell
Defendant.	)	

---

Cyndi Bonk certifies that on **January 16, 2006**, a copy of the:

1. January 16, 2006 Expert Report of Douglas McDonald; and
2. January 16, 2006 Expert Report of Steve Carpenter

was served upon the below-named as follows:

VIA U.S. MAIL

Mr. Daniel N. Ballard  
Mr. Michael Wilcox  
MCDONOUGH, HOLLAND & ALLEN, P.C.  
555 Capitol Mall  
9<sup>th</sup> Floor  
Sacramento, CA 95814

VIA U.S. MAIL

Mr. Adam B. Price  
JONES, WALDO, HOLBROOK & MCDONOUGH  
170 South Main Street  
Suite 1500  
Salt Lake City, UT 84101

VIA U.S. MAIL

Matthew T. Bagley  
KESLER & RUST  
36 South State Street, Suite 2000  
Salt Lake City, UT 84111

Cyndi Bonk  
Cyndi Bonk

Subscribed and sworn to before me  
on the 16<sup>th</sup> day of January, 2006.

Christine E. Hartness  
Notary Public





instructions provided by Diversi-Plast's attorneys and information provided and discussed in my initial report on infringement, which is incorporated by reference into this report. I reserve the right to supplement my opinions and analysis upon the issuance by the Court of an order construing the asserted claims of the '193 Patent as well as any further developments in the reissue/reexam prosecution of the '193 Patent.

Based upon instructions provided by Diversi-Plast's attorneys, my close review of the '193 Patent in light of my practical understanding and experience with roof battens and tile roofing systems, and Mr. Dregger's Rebuttal Report, it is still my opinion that Battens Plus infringes claim 2 of '193 Patent and that Mr. Dregger's Rebuttal Report does not demonstrate that claim 2 of the '193 Patent is indefinite or lacks understanding to someone with practical knowledge and experience with tile roofing systems.

#### **Indefiniteness**

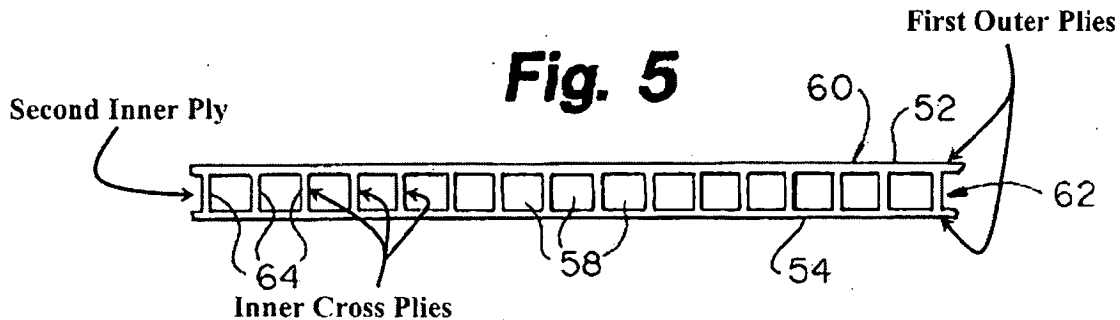
In addition to the previous instructions provided by Diversi-Plast's attorneys, I have been instructed that indefiniteness relates to validity of a patent claim and does not involve infringement. Therefore, Mr. Dregger's conclusions on indefiniteness in his Rebuttal Report do not address infringement. However, the clear meaning of the terms in the '193 Patent are discussed in detail below.

#### **Claim Construction**

Mr. Dregger's Rebuttal Report states that the terms "ply," "plies," "cross-plies," "second ply," and "first plies" are not defined by the '193 Patent. However, as I stated in my report regarding infringement, all of the language used in claim 2 is understandable after reading the '193 Patent and none of the claim language requires any special understanding or meaning. For instance, Figure 5 (shown below) and Column 3, Lines 18-24 of the '193 Patent clearly define



the various plies as distinct sections of the batten.

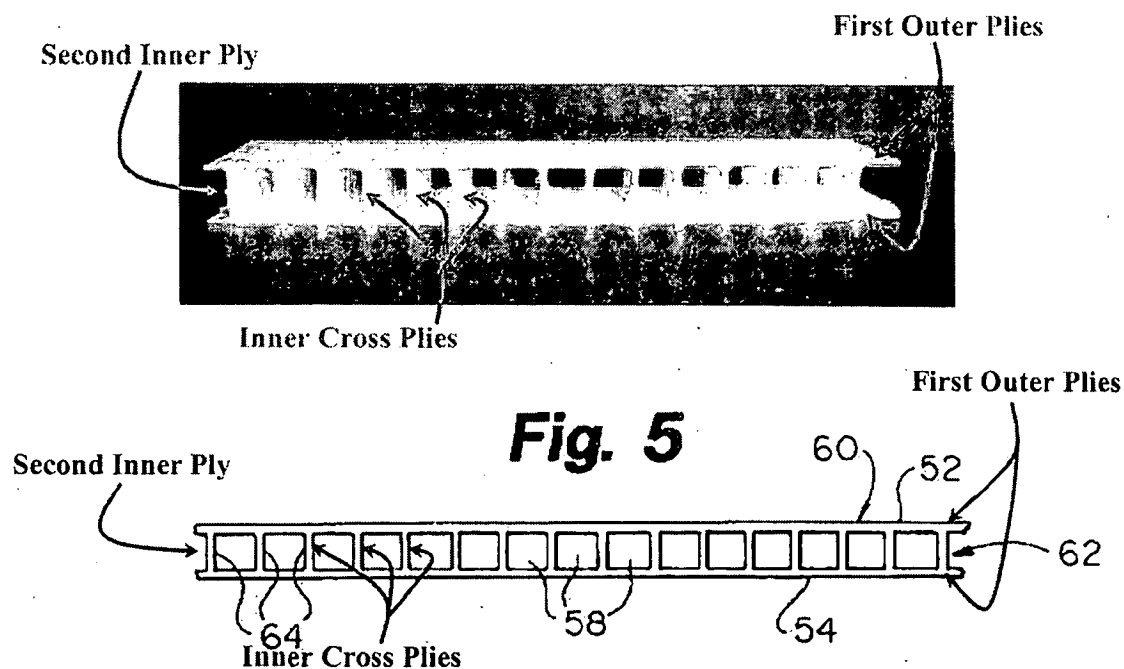


Mr. Dregger's Rebuttal Report also makes the confusing argument that the terms "ply," "plies," "cross-plies," "second ply," and "first plies" have a special meaning. It is unclear how a patent could not define a term on one hand, and then provide a special meaning for a term on the other hand, as argued by Mr. Dregger. As I have stated, these terms are very clearly defined and shown in the '193 Patent and do not require any special meaning or understanding. To the extent Mr. Dregger is attempting to make an invalidity argument, my opinions on the validity of the '193 Patent were provided in my Rebuttal Report Regarding the Validity of U.S. Patent No. 6,357,193, demonstrating that the terms of claim 2 are clear and claim 2 is valid.

#### **Reading Claim 2 on the BattenUp Tile Batten**

Mr. Dregger's Rebuttal Report also mistakenly states that someone having ordinary skill in the art would interpret claim 2 of the '193 Patent to exclude extruded products. The figures of the '193 Patent, such as Figure 5 (shown above), in combination with Column 3, Lines 34-51 of the '193 Patent clearly indicate that the '193 Patent covers plastic materials, including polyethylene resins, and could be formed by known processes, such as extrusion. Extrusion and other processes of making plastic battens could be used to make a batten having the structure of claim 2, such as the claimed plies, as demonstrated by the infringing BattenUp product.

Mr. Dregger also incorrectly states that the BattenUp product does not contain the “second ply” or “first ply” elements of claim 2. However, comparing the batten elements of claim 2 as disclosed in Figure 5 and Column 3, Lines 18-24 with the BattenUp product (see below) clearly proves that the BattenUp product contains all of the batten elements, including the distinct “second ply” and “first ply” elements of claim 2.



#### Other Elements of Claim 2

As I stated in my earlier report on infringement, it is also my opinion that the BattenUp tile batten roof system includes the other elements of claim 2 of the '193 Patent. The BattenUp tile batten roof system sold and advertised by Battens Plus includes a plastic tile batten made to lay over roofing material, such as felt, and under the tile to support the tile. Mr. Dregger's Rebuttal Report does not address these elements of claim 2, so I assume he does not dispute my conclusions.

### III. CONCLUSION

Based on the reasoning provided in section II of this report, it is still my opinion that Battens Plus infringes claim 2 of the '193 Patent with its BattenUp tile batten system, both directly and through induced and contributory infringement. The BattenUp tile batten system includes each and every element of claim 2.

### IV. EXHIBITS

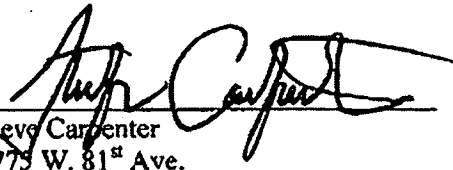
I may use exhibits at trial or other hearings including (1) portions of the '193 patent, (2) portions of any initial, rebuttal, or reply report of Diversi-Plast or Battens Plus, (3) portions of the materials identified in the text and appendices of any initial, rebuttal, or reply report of Diversi-Plast or Battens Plus, (4) sample batten products, and (5) exhibits as an aid to the Court in presenting my opinion.

In preparing this report I relied on the information and materials currently available to me. I reserve the right to continue my investigation and to supplement or modify my opinion based on documents and information that has not yet been produced or is not yet available, and based on any relevant information from or actions taken during the reexam/reissue proceeding for the '193 Patent currently pending with the U.S. Patent Office. I understand that I may be asked to give further opinions in response to any future opinions expressed by Defendant's experts.

Respectfully submitted,

Dated: February 27, 2006

By:

  
Steve Carpenter  
9775 W. 81<sup>st</sup> Ave.  
Arvada, CO 80005

**APPENDIX A**  
**INFORMATION AND DOCUMENTS REVIEWED AND**  
**RELIED UPON**

United States Patent Number 6,357,193 B1 with related file history

BattenUp tile batten sample (BP 0001)

Digital Photographs of the BattenUp tile batten (BP 0001)

Battens Plus website (BP 0002 – BP 0008)

Battens Plus website (no markings)

A copy of U.S. Provisional Application No. 60/112,567

Documents produced by Battens Plus (BP 0012-0014, BP 0245-0247, BP 0254-0255, BP 0267-0268, BP 0331, BP 0348-0349, BP 0363-0364, and DP 01533-01546)

Expert Report of Steve Carpenter on Infringement (with appendices)

Rebuttal Report of Steve Carpenter Regarding the Validity of U.S. Patent No. 6,357,193 (with appendices)

Opening Report of Philip D. Dregger Concerning U.S. Patent 6,357,193 B1 (with appendices)

Rebuttal Report of Philip D. Dregger Concerning U.S. Patent 6,357,193 B1 (with appendices)

Matthew G. Bagley (6820)

**KESLER & RUST**

36 South State Street, Suite 2000

Beneficial Life Tower

Salt Lake City, Utah 84111

Telephone: (801) 532-8000

Facsimile: (801) 531-7965

**ATTORNEYS FOR PLAINTIFF DIVERSI-PLAST PRODUCTS, INC.**

Randall T. Skaar (*Pro Hac Vice*)

Matthew T. Macari (*Pro Hac Vice*)

**PATTERSON, THUENTE, SKAAR**

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4800 IDS Center

80 South Eighth Street

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Telephone: (612) 349-5740

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Diversi-Plast Products, Inc., )

a Minnesota corporation, )

Plaintiff, )

vs. )

Battens Plus, Inc., )

a California corporation, )

Defendant. )

**CERTIFICATE OF SERVICE**

Civil Action No: 2:04-CV-01005 PGC

Judge: Paul G. Cassell

---

Dainia Velishek certifies that on **February 27, 2006**, a copy of the:

1. Reply Expert Report of Steve Carpenter on Infringement with Appendix A,

was served upon the below-named as follows:

VIA FACSIMILE & U.S. MAIL

Mr. Daniel N. Ballard  
Mr. Michael Wilcox  
McDONOUGH, HOLLAND & ALLEN, P.C.  
555 Capitol Mall  
9<sup>th</sup> Floor  
Sacramento, CA 95814

VIA U.S. MAIL

Mr. Adam B. Price  
JONES, WALDO, HOLBROOK & McDONOUGH  
170 South Main Street  
Suite 1500  
Salt Lake City, UT 84101

VIA U.S. MAIL

Matthew T. Bagley  
KESLER & RUST  
36 South State Street, Suite 2000  
Salt Lake City, UT 84111

dainia Velishek  
Dainia Velishek

Subscribed and sworn to before me  
on February 27, 2006.

Christine E. Hartness  
Notary Public



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